

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

United States of America,

03 Cr. 717 (MGC)

- against -

MEMORANDUM OPINION

Martha Stewart and Peter Bacanovic,

Defendants.

-----X

APPEARANCES:

O'MELVENY & MYERS LLP  
Attorneys for Defendant Martha Stewart  
1625 Eye Street, NW  
Washington, DC 20006-4001

By: Walter E. Dellinger

Martin G. Weinberg  
Kimberly Homan  
Attorneys for Defendant Martha Stewart  
20 Park Plaza, Suite 905  
Boston, Massachusetts 02116

GOODMAN & CHESNOFF  
Attorneys for Defendant Martha Stewart  
520 South Fourth St.  
Las Vegas, Nevada 89101

By: David Z. Chesnoff

DAVID N. KELLEY  
United States Attorney  
Southern District of New York  
Attorney for the Government  
One Saint Andrew's Plaza  
New York, NY 10007

By: Michael S. Schachter  
Assistant United States Attorney

**CEDARBAUM, J.**

The Court of Appeals has partially remanded this case in order to give me the opportunity to decide whether to modify defendant Stewart's sentence. In accordance with the teaching of United States v. Crosby, 397 F.3d 103 (2d Cir. 2005), after obtaining the views of counsel in writing, I have decided not to resentence in this case because I am satisfied that if the Sentencing Guidelines had been advisory at the time of sentencing, I would have imposed the same sentence. I am satisfied that the sentence in this case was reasonable and appropriate even if not mandated by the Guidelines.

Defendant Stewart should not be treated differently from any other person convicted of the crimes of which she was convicted. The sentence I imposed was the minimum under the Sentencing Guidelines. I considered it appropriate under all of the factors set out in 18 U.S.C. § 3553(a). In my opinion, the sentence I imposed was particularly needed to reflect the seriousness of the offense, to promote respect for the law and to provide just punishment. Although the Guidelines are no longer mandatory, I see no reason to modify the sentence.

Defendant Stewart has not only requested resentencing, but seeks extensive modification of the conditions of home detention and the term of supervised release. Home detention is imposed as an alternative to imprisonment. It is designed to be confining.

The gravamen of defendant Stewart's application for modification of the usual conditions of home detention is that these conditions make it inconvenient for her to perform certain business arrangements that she made after she was sentenced. The business arrangements entered into by defendant Stewart prior to or during her time in prison were made with full knowledge on her part, and on the part of the other parties to those arrangements, of the terms of her supervised release, including five months of home detention. Neither she nor they had any right to expect that those business arrangements would persuade me that the conditions of home confinement or the term of supervised release should be changed. The argument is circular, to say the least.

Accordingly, defendant Stewart's applications are denied.

SO ORDERED.

Dated: New York, New York  
April 11, 2005

---

MIRIAM GOLDMAN CEDARBAUM  
United States District Judge